

Selma

Muller FILED

LOIS J. SCHIFFER
 Assistant Attorney General
 Environment and Natural Resources Division
 United States Department of Justice
 JON A. MUELLER
 Environmental Enforcement Section
 P.O. Box 7611
 Washington, D.C. 20044
 (202) 514-0056

APR 1 11 12 AM '96

CLERK, U.S. DIST. COURT
EASTERN DIST. OF CALIF.

BY

SFUND RECORDS CTR
1047-01126

CHARLES J. STEVENS
 United States Attorney
 Eastern District of California
 DANIEL BENSING
 Assistant United States Attorney
 3654 Federal Building
 1130 O Street
 Fresno, California 93721
 (209) 487-5820

RECEIVED

APR 24 1996

U.S. EPA Region 9

Attorneys for Plaintiff, the United States

KENNETH ALEX
 Supervising Deputy Attorney General
 Office of the Attorney General
 2101 Webster Street
 Oakland, CA 94612-3049

Attorney for Plaintiff, the State of California
 (defense counsel on next page)

THE UNITED STATES DISTRICT COURT FOR THE
 EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

CIVIL ACTION NO.
CV F-91-0519 REC DLB

Plaintiff,

(consolidated with)

v.

CV-F-91-522-REC DLB

SELMA PRESSURE TREATING, CO.,
 et al.,

CONSENT DECREE

The original of this document is deficient
 for the following reason:
☐ Not signed ☐ Not original signature
☒ No Proof of Service ☐ Proof not signed

Other: _____ DEPARTMENT OF JUSTICE

APR 12 1996

EPA REGION 9

DAVID DOYLE
Kimble MacMichael and Upton
P. O. Box 9489
5260 N. Palm Avenue
Suite 221
Fresno, CA 93792-9489
(209) 435-5500

Attorneys for Defendants Gerald Petery and Selma Leasing Company

| | |
|-------------------------------|---|
| THE STATE OF CALIFORNIA, |) |
| |) |
| Plaintiff, |) |
| |) |
| v. |) |
| |) |
| SELMA PRESSURE TREATING, CO., |) |
| et al., |) |
| <hr/> |) |

TABLE OF CONTENTS

| | | |
|-------|--|----|
| I. | BACKGROUND | 4 |
| II. | JURISDICTION | 7 |
| III. | PARTIES BOUND. | 7 |
| IV. | DEFINITIONS. | 7 |
| V. | REIMBURSEMENT OF RESPONSE COSTS. | 10 |
| VI. | FAILURE TO MAKE TIMELY PAYMENTS. | 15 |
| VII. | COVENANTS NOT TO SUE BY PLAINTIFFS | 16 |
| VIII. | COVENANTS BY DEFENDANTS. | 20 |
| IX. | EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION. | 20 |
| X. | SITE ACCESS. | 22 |
| XI. | RETENTION OF RECORDS | 23 |
| XII. | NOTICES AND SUBMISSIONS. | 24 |
| XIII. | RETENTION OF JURISDICTION. | 26 |
| XIV. | APPENDICES | 26 |
| XV. | LODGING AND OPPORTUNITY FOR PUBLIC COMMENT | 26 |
| XVI. | SIGNATORIES; SERVICE | 27 |

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA").

B. The United States in its complaint seeks injunctive relief to compel the performance of response actions and reimbursement of response costs incurred and to be incurred by EPA and the Department of Justice for response actions in connection with the release or threatened release of hazardous substances at the Selma Pressure Treating Company Site, the City of Selma, County of Fresno, State of California (the "Site"), and a declaration of Settling Defendants' liability for further response costs.

C. In accordance with the National Contingency Plan ("NCP") and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of California on April 26, 1990 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and to be a party to this Consent Decree.

D. The Department of Toxics and Substances Control of the State of California (the "State") has also filed a complaint against the defendants in this Court alleging that the defendants

are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622 (j)(1), EPA notified the U.S. Department of the Interior, Fish and Wildlife Service ("DOI") in October, 1985 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of any Consent Decree.

F. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R., Part 300, Appendix B, by publication in the Federal Register in September 1983, 48 Fed.Reg. 40658.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, in April 1986 EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. EPA completed a Remedial Investigation Report on March 21, 1988 and EPA completed a Feasibility Study Report on June 3, 1988.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed

plan for remedial action in May 1988 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan of remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a Record of Decision executed September 24, 1988, on which the State had a reasonable opportunity to review and comment. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. The remedial action will be implemented by EPA. The purpose of this Consent Decree is to provide for Settling Defendants' payment of their share of the cost of the remedial action and the United States' other response costs.

M. The parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this Decree, it is ORDERED, ADJUDGED AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State, and upon the Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto the

following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

b. "Certification of Completion" shall mean EPA's certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that remedial action has been completed at the Site in accordance with the requirements of the NCP and the ROD.

c. "Consent Decree" shall mean this Decree and any attached appendices.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or Federal Holiday, the period shall run until the close of business of the next working day.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "Future Response Costs" shall mean all costs, including, but not limited to direct and indirect costs, that EPA and the U.S. Department of Justice on behalf of EPA will incur for response actions at the Site after entry of this Consent Decree; provided, however, that costs incurred for response actions undertaken for "unknown conditions," as that term is used in this Consent Decree, are not limited by this definition.

g. "Interest", in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on

investments of the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507.

h. "National Contingency Plan" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

j. "Parties" shall mean the United States, the State of California, and Settling Defendants.

k. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA and the U.S. Department of Justice on behalf of EPA have incurred for response actions at the Site prior to entry of this Consent Decree; provided, however, that costs incurred for response actions undertaken for "unknown conditions," as that term is used in this Consent Decree, are not limited by this definition.

l. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 24, 1988 by the Regional Administrator, EPA Region 9, all attachments thereto, and any Explanations of Significant Differences issued in connection therewith.

m. "Remedial Action" shall mean the response actions at the Site set forth in the Record of Decision.

n. "Section" shall mean a portion of this Consent Decree

identified by a roman numeral.

o. "Settling Defendants" shall mean Gerald Petery and Selma Leasing Company.

p. "Site" shall mean the Selma Pressure Treating Company Superfund Site, located in the City of Selma, County of Fresno, State of California and designated by the property description attached hereto as Appendices A, B, and C.

q. "State" shall mean the State of California.

r. "State Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs together with accrued Interest that the State of California has incurred or will incur in response to the release or threatened release of hazardous substances at or in connection with the Site, but not including any amounts reimbursed to the State by EPA.

s. "United States" shall mean the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of Justice acting on behalf of the EPA.

V. REIMBURSEMENT OF RESPONSE COSTS

4.a. Payment of Response Costs to the United States. By November 3, 1995, Settling Defendants will have deposited or caused their insurance carriers to have deposited for payment to the United States, \$720,000 for Past and Future Response Costs into an escrow account established with the Registry of the Court. Settling Defendants shall instruct the clerk of the Court Registry Account to pay such amount to the United States within thirty (30) days of entry of this Consent Decree. Payment shall be made in the

form of a certified check or checks or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," which bear a reference to the Selma Pressure Treating Company Superfund Site, Site No. 9T44, in reimbursement of Past and Future Response Costs. The escrow instructions have been approved by the United States and are attached to this Consent Decree as Appendix D. The escrow instructions require that the Clerk of the Registry Account forward such a check(s) to:

Region IX
Attention: Superfund Accounting
P.O. Box 360863M
Pittsburgh, Pennsylvania 15251

and send copies of the check(s) to the United States as specified in Section XII (Notices and Submissions).

Upon full payment of the amount stated above, together with any accrued Interest and/or penalties (see Section VI, §§ 8 and 9), EPA agrees to release its liens on the properties described in Appendices A, B, and C.

b. Payment of Response Costs to the State.

By November 3, 1995, or within 15 days after entry of this Consent Decree, whichever occurs later, Settling Defendants will have deposited or caused their insurance carriers to have deposited for payment to the State, \$80,000 for Past and Future Response Costs into an escrow account established with the Registry of the Court. Settling Defendants have instructed the clerk of the Registry Account to pay such amount to the State within thirty (30) days of entry of the Consent Decree. The check(s) shall be made payable to Department of Toxic Substances Control and shall

reference the Selma Pressure Treating Company Superfund Site. The escrow instructions have been approved by the State and are attached to this Consent Decree as Appendix D. The instructions require the clerk of the Registry Account to forward a check(s) to:

Department of Toxic Substances Control
400 P Street, 4th Floor
Sacramento, CA 95814

5. Financial Certification.

Settling Defendants hereby certify that all financial information submitted as of the lodging of this Consent Decree is true and correct and contains no material errors or omissions affecting the United States' assessment of the Settling Defendants' ability to pay. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order seeking to compel Settling Defendants to perform further response actions relating to the Site or to reimburse the United States for additional costs of response if the United States obtains information indicating that the financial information submitted as of the date of the lodging of this Consent Decree is not true and correct or otherwise contains material errors or omissions affecting the United States' assessment of the Settling Defendants' ability to pay.

6. Periodic Review.

If the Regional Administrator, EPA Region 9, or her delegate determines that the Remedial Action is not protective of human

health and the environment, the Settling Defendants shall pay for any further response actions selected by EPA to assure that the remedial action is protective of human health and the environment, provided that Settling Defendants' liability for such further response actions is reserved by paragraphs 14 and 15 of this Consent Decree (United States' Covenants Not to Sue). The Settling Defendants may invoke the procedures set forth in Paragraph 7 to dispute (1) EPA's determination that the remedial action is not protective of human health and the environment, (2) EPA's selection of the further response actions as arbitrary and capricious or otherwise not in accordance with law, and/or (3) EPA's determination that the Settling Defendant's liability for the further response actions is reserved by the Covenant Not to Sue.

7. Dispute Resolution Procedures.

a. Any disputes which arise under or with respect to paragraph 6 shall in the first instance be subject to informal negotiations between the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

b. In the event that the parties cannot resolve a dispute by informal negotiations, then the position advanced by EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to,

any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants.

c. Within 20 days after receipt of Settling Defendants' Statement of Positions, EPA will serve on Settling Defendants its Statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA.

d. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

e. The Regional Administrator, EPA Region 9, will issue a final administrative decision resolving the dispute based on the administrative record described in subparagraph d. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to subparagraphs f. and g. below.

f. Any administrative decision made by EPA pursuant to subparagraph e. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendants with the Court and served on all Parties within 20 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the effort made by the parties to resolve it, the relief requested, and the schedule, if

any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal. The Federal Rules of Civil Procedure and local court rules for motions shall govern the resolution of the dispute.

g. In the proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Regional Administrator was arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled by EPA.

VI. FAILURE TO MAKE TIMELY PAYMENTS

8. Interest on Late Payments. In the event that any payment(s) required by Section V are not made when due, Interest, as defined in Paragraph 3, shall continue to accrue on the unpaid balance, through the date of payment.

9. Stipulated Penalty. If any amounts due to the United States under this Consent Decree are not paid by the required date, the Settling Defendants shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$1,000 per day that such payment is late. Stipulated penalties are due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph shall be paid by certified check made payable to "EPA Hazardous Substance Superfund", shall be mailed to Region IX, Attention Superfund Accounting, P.O. Box 360863M, Pittsburgh,

Pennsylvania, shall reference CERCLA Site No. 9T44 and DOJ Case Number 90-11-2-383. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent to the United States as provided in Section XI (Notices and Submissions). Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand.

10. If the United States or the State must bring an action to collect any payment required by this Consent Decree, the Settling Defendants shall reimburse the United States and the State for all costs of such action, including, but not limited to, costs of attorney time.

11. Payments made under Paragraphs 8-10 shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments required by this Decree.

12. The obligations of the Settling Defendants to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining defendants shall be responsible for such payments.

VII. COVENANT NOT TO SUE BY PLAINTIFFS

13. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under

the terms of the Consent Decree, and except as specifically provided in Paragraphs 5, 14, 15, and 16, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Section V. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

14. United States' Pre-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (a) conditions at the Site, previously unknown to EPA, are discovered, or
- (b) information, previously unknown to EPA, is

received, in whole or in part,
and these previously unknown conditions or information together
with any other relevant information indicates that the Remedial
Action is not protective of human health or the environment.

15.a. United States' Post-certification reservations.
Notwithstanding any other provision of this Consent Decree, the
United States reserves, and this Consent Decree is without
prejudice to, the right to institute proceedings in this action or
in a new action, or to issue an administrative order seeking to
compel Settling Defendants (1) to perform further response actions
relating to the Site or (2) to reimburse the United States for
additional costs of response if, subsequent to Certification of
Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to
EPA, are discovered, or
- (ii) information, previously unknown to EPA, is
received, in whole or in part,

and these previously unknown conditions or information together
with any other relevant information indicates that the Remedial
Action is not protective of human health or the environment.

b. Unknown conditions. For purposes of Paragraph 14,
the information and the conditions known to EPA shall include only
that information and those conditions set forth in the Record of
Decision, the administrative record supporting the Record of
Decision, any Explanations of Significant Differences from the
Record of Decision and any amendments to the Record of Decision,

and the record for the Site maintained by EPA following issuance of the Record of Decision but prior to the entry of this Consent Decree. For purposes of Paragraph 15a., the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and the record for the Site maintained by EPA following issuance of the Record of Decision but prior to issuance of the Certification of Completion of the Remedial Action.

16. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 13. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including, but not limited to, the following:

- (a) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- (b) liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the site;
- (c) liability for damages for injury to, destruction of, or loss of natural resources;
- (d) liability for response costs that have been or may be incurred by any federal agencies other than EPA or the Department of Justice on behalf of EPA;
- (e) criminal liability; and

(f) liability, if any, for violations of federal or state law which occur during or after implementation of the Remedial Action.

VIII. COVENANTS BY SETTLING DEFENDANTS

17. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law, any claim against the United States or the State, including any department, agency, or instrumentality of the United States or the State, including any department, agency or instrumentality of the United States pursuant to CERCLA Section 107 and 113 related to the Past and Future Response Costs or Oversight Costs, or any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

In addition, Settling Defendants agree to waive any claims they may have against the United States for the demolition and removal of the wood treating facility located on the parcel identified in Appendix A.

IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

18. Nothing in this Consent Decree shall be construed to

create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

19. With regard to claims for contribution against Settling Defendants for matter addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

20. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the State within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within ten (10) days of service or receipt of any Motion of Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

21. In any subsequent administrative or judicial proceeding

initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VII (Covenant Not to Sue by Plaintiffs).

X. SITE ACCESS

22. Commencing upon the date of lodging of this Consent Decree, the Owner agrees to provide the United States, the State and their representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property owned or controlled by Settling Defendants to which access is required for the implementation of response actions for the Site, including, but not limited to:

- a. Monitoring, investigation, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples; and

e. Assessing the need for, planning, or implementing response actions at or near the Site.

The response action includes the removal and treatment of soil underneath the wood treatment facility (located on the parcel identified in Appendix A) which thereby requires demolition and removal of such facility. Settling Defendants acknowledge and agree that the access granted to EPA in this Section X specifically includes consent to the demolition and removal of such facility without reimbursement therefor, or reconstruction thereof.

XI. RETENTION OF RECORDS

23. Until ten (10) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in his/its possession or control or which come into his/its possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site.

24. At the conclusion of this document retention period, Settling Defendants shall notify the United States or the State, Settling Defendants shall deliver any such records or documents to the EPA or the State. Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendants assert such privilege, they shall provide the plaintiffs with the following: (1) the title of the document, record, or information; (2) the date

of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject to the document, record, or information; and (6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privilege information only.

25. Each Settling Defendant hereby certifies, individually, that such Settling Defendant has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to his/its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that he/it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

26. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their

Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

26. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Settling Defendants agree to notify the United States, EPA, and the State consistent with this section should Settling Defendants seek protection from creditors pursuant to the Bankruptcy Code. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State and the Settling Defendants, respectively.

As to the United States:

Bruce Gelber
Acting Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ No. 90-11-2-383

Jon Mueller
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

As to EPA:

Danita Yocom
Assistant Regional Counsel

Office of the Attorney General
2101 Webster Street
Oakland, CA 94612-3049

As to Settling Defendants:

Gerald Petery
2863 Olive
Selma, California 92662

XIII. RETENTION OF JURISDICTION

27. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

XIV. APPENDICES

28. The following appendices are attached to and incorporated into this Consent Decree:

Appendices A, B, and C Real Property Descriptions

Appendix D Escrow Instructions (Registry
Account)

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

29. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.


30. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. SIGNATORIES: SERVICE

31. Each undersigned representative of a Settling Defendant to this Consent Decree and the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

32. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree.

SO ORDERED THIS 21st DAY OF March, 1996.



United States District Judge

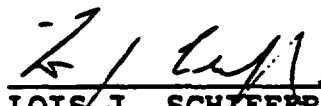
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Selma Pressure Treating Company, et al., CV-F-91-519 REC, consolidated with State of California v. Selma Pressure Treating Company, et al., CV-F-91-522 REC, relating to the Selma Pressure Treating Company Superfund Site.


CHARLES J. STEVENS
United States Attorney
Eastern District of California

12-28-95

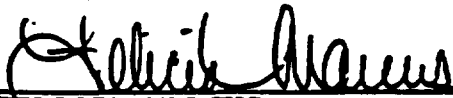
BY:


DANIEL BENSING
Assistant United States Attorney
3654 Federal Building
1130 O Street
Fresno, California 93721
(209) 487-5820

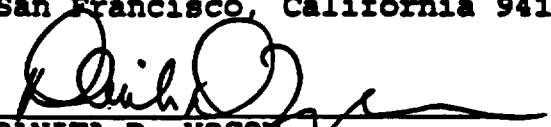

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice


JON A. MUELLER
Trial Attorney
Environment and Natural Resources
Division
Environmental Enforcement Section
P.O. Box 7611
U.S. Department of Justice
Ben Franklin Station
Washington, D.C. 20044

1 DATE: 12-6-95


FELICIA MARCUS
Regional Administrator
U.S. Environmental Protection Agency,
Region IX
75 Hawthorne Street
San Francisco, California 94105

2
3
4
5
6 DATE: 12/6/95


DANITA D. YOCOM
Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region IX
75 Hawthorne Street, RC-3-2
San Francisco, California 94105

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Selma Pressure Treating Company, et al., CV-F-91-519 REC, consolidated with State of California v. Selma Pressure Treating Company, et al., CV-F-91-522 REC, relating to the Selma Pressure Treating Company Superfund Site.

FOR THE STATE OF CALIFORNIA

Date: 10/16/95

Kenneth Alex
KENNETH ALEX

Supervising Deputy Attorney General
Office of the Attorney General
2101 Webster street
Oakland, CA 94612-3049

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Selma Pressure Treating Company, et al., CV-F-91-519 REC, consolidated with State of California v. Selma Pressure Treating Company, et al., CV-F-91-522 REC, relating to the Selma Pressure Treating Company Superfund Site.

Date:

9.29.95


Gerald Petery

SELMA LEASING COMPANY


Gerald Petery, President

Agent Authorized to Accept Service on Behalf of Above-signed party:

Name:

Title:

Address:

**APPENDIX A
(APN 59)**

THAT REAL PROPERTY SITUATED IN THE COUNTY OF FRESNO, STATE CALIFORNIA AND DESCRIBED AS FOLLOWS:

BOOK 5911 PAGE 466 RECORDED JULY 6, 1971

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 22 EAST, MT. DIABLO BASE AND MERIDIAN PER U.S. GOVERNMENT SURVEYS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 8; THENCE N 0 DEGREES 39' 00" E, ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 8, A DISTANCE OF 667.00 FT.; THENCE N 89 DEGREES 21' 00" W, A DISTANCE OF 433.00 FT TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND DEED TO SELMA PRESSURE TREATING CO. AND RECORDED OCTOBER 21, 1970, IN BOOK 5829, PAGE 976, SAID SOUTHWEST CORNER BEING THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING N 89 DEGREES 21' 00" W, A DISTANCE OF 891.32 FT.; THENCE N 0 DEGREES 43' 38" E. A DISTANCE OF 656.28 FT; THENCE S 89 DEGREES 36' 45" E, A DISTANCE OF 880.04 FT.; THENCE N 42 DEGREES 26' 49" E, A DISTANCE OF 15.62 FT., TO THE NORTHWESTERLY CORNER OF SAID SELMA PRESSURE TREATING COMPANY PROPERTY; THENCE S 8 DEGREES 39' 88" W, ALONG THE WEST PROPERTY LINE OF SAID SELMA PRESSURE TREATING COMPANY PROPERTY, A DISTANCE OF 671.95 FT., TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

**APPENDIX B
(APN 57)**

THAT REAL PROPERTY SITUATED IN THE COUNTY OF FRESNO, STATE CALIFORNIA AND DESCRIBED AS FOLLOWS:

IN BOOK 6816 PAGE 210 RECORDED MAY 23, 1973

BEING A PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 22 EAST, MT. DIABLO BASE AND MERIDIAN, PER U.S. GOVERNMENT SURVEYS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF DOCKERY AVENUE SAID POINT BEARS N 0 DEGREES 39' 00" EAST 667.00 FEET AND N 89 DEGREES 21' 00" WEST, 20.00 FEET FROM THE CENTER OF SAID SECTION 8; THENCE N. 89 DEGREES 21' 00" WEST, A DISTANCE OF 413.00 FEET; THENCE N 0 DEGREES 39' 00" EAST, A DISTANCE OF 671.95 FEET TO A POINT ON THE NORTHWEST LINE OF THAT CERTAIN PARCEL OF LAND DEEDED BY THE STATE OF CALIFORNIA TO R.J. PETERY, ET UX. AS SHOWN IN BOOK 3676, PAGE 180, DATED OCTOBER 31, 1955, OFFICIAL FRESNO COUNTY RECORDS; THENCE N. 42 DEGREES 26' 49" EAST ALONG SAID NORTHWEST LINE, A DISTANCE OF 36.88 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF GOLDEN STATE BOULEVARD; THENCE SOUTH 41 DEGREES 03' 45" EAST, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF GOLDEN STATE BOULEVARD, A DISTANCE OF 583.74 TO A POINT ON THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF DOCKERY AVENUE; THENCE S. 0 DEGREES 39' 00" WEST, ALONG SAID WEST RIGHT-OF-WAY-LINE OF DOCKERY AVENUE, A DISTANCE OF 263.69 FEET TO THE POINT OF BEGINNING.

RESERVING THE FARM PUMP LOCATED ON SAID PROPERTY, AND FURTHER RESERVING A RIGHT TO THE USE OF THE WELL AND A RIGHT-OF-WAY FOR PIPELINE WHERE IT PRESENTLY EXISTS ON SAID DESCRIBED REAL PROPERTY, WITH THE RIGHT OF INGRESS AND EGRESS FOR MAINTENANCE, REPAIR AND OPERATION.

**APPENDIX C
(Vineyard Parcel)**

THAT REAL PROPERTY SITUATED IN THE COUNTY OF FRESNO, STATE CALIFORNIA AND DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 22 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER OF SAID SECTION 8; THENCE SOUTH ALONG THE EASTERLY LINE OF THE SOUTHWEST QUARTER A DISTANCE OF 480.38 FEET; THENCE NORTH 88 DEG. 59' 15" WEST A DISTANCE OF 20 FEET; THENCE SOUTH 31 DEG. 45' WEST A DISTANCE OF 201.89 FEET; THENCE NORTH 43 DEG. 21' WEST TO A POINT ON THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8; THENCE NORTH ALONG SAID WEST LINE TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND DEEDED TO SELMA LEASING COMPANY, INC., A CALIFORNIA CORPORATION RECORDED JULY 6, 1971, IN BOOK 5911 PAGE 466 OF OFFICIAL RECORDS, DOCUMENT NO. 53015; THENCE SOUTH 89 DEG. 21' 00" EAST, A DISTANCE OF 1324.32 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8; THENCE SOUTH ALONG SAID EAST LINE A DISTANCE OF 667 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

1m

United States District Court
for the
Eastern District of California
April 1, 1996

* * CERTIFICATE OF SERVICE * *

1:91-cv-00519

California

v.

Selma Pressure

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on April 1, 1996, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Lisa Trankley Sato
Attorney General's Office of the State of California
P O Box 944255
1300 I Street
Suite 1101
Sacramento, CA 94244-2550

Bruce A Behrens
California Department of Transportation
P O Box 1438
1120 N Street
Legal Division
Sacramento, CA 95812-1438

Jon A Mueller
United States Department of Justice
Environment and Natural Resources Div
P O Box 7611
Ben Franklin Station
Washington, DC 20044

Kevin Dennis Sheehy
Law Offices of Kevin Sheehy
2001 Wilshire Blvd
Sixth Floor
Santa Monica, CA 90403

David Douglas Doyle
Law Office of David D Doyle
1795 North Fine Avenue
Fresno, CA 93727

Daniel Edward Lungren
Attorney General's Office for the State of California
P O Box 944255
1300 I Street
Suite 1101
Sacramento, CA 94244-2550

Jack L. Wagner, Clerk

BY:


Deputy Clerk

1047-01127

Selma
Mueller

FILED

APR 1 3 48 PM '96

CLERK, U.S. DIST. COURT

ENTERED

DATE: 4-1-96

BY: *Sp*

CLOSED

4-1-96

CR:JSS

CV:JSS

PP

RECEIVED

APR 24 1996

Office of Cont.
U.S. EPA Region 9

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
JON A. MUELLER
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044
(202) 514-0056

CHARLES J. STEVENS
United States Attorney
Eastern District of California
DANIEL BENSING
Assistant United States Attorney
3654 Federal Building
1130 O Street
Fresno, California 93721
(209) 487-5820

Attorneys for Plaintiff, the United States

KENNETH ALEX
Supervising Deputy Attorney General
Office of the Attorney General
2101 Webster Street
Oakland, CA 94612-3049

Attorney for Plaintiff, the State of California
(defense counsel on next page)

IN THE UNITED DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

CIVIL ACTION NO.
CV F-91-0519 REC DLB

Plaintiff,

(consolidated with)

v.

CV-F-91-522-REC DLB

SELMA PRESSURE TREATING, CO.,
et al.,

The original of this document¹ is deficient
for the following reason:

☒ Not signed ☐ Not original signature
☒ No Proof of Service ☐ Proof not signed
Other: _____

| |
|--------------------------------------|
| DEPARTMENT OF JUSTICE |
| APR 5 1996 |
| LANDS DIVISION ENFORCEMENT RECORD |

118

1 Kevin D. Sheehy
2 2001 Wilshire Boulevard
3 Sixth Floor
4 Santa Monica, CA 90403

5 Attorney for Defendants Mary Ann Schuessler and Selma Pressure
6 Treating Company, Inc.

7 THE STATE OF CALIFORNIA,)
8 Plaintiff,)
9 v.)
10 SELMA PRESSURE TREATING, CO.,)
11 et al.,)
12 _____)
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF CONTENTS

| | | |
|-------|--|----|
| I. | BACKGROUND | 3 |
| II. | JURISDICTION | 6 |
| III. | PARTIES BOUND. | 6 |
| IV. | DEFINITIONS. | 7 |
| V. | REIMBURSEMENT OF RESPONSE COSTS. | 10 |
| VI. | COVENANTS NOT TO SUE BY PLAINTIFFS | 11 |
| VII. | COVENANTS BY DEFENDANTS. | 14 |
| VIII. | EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION. . . | 14 |
| IX. | RETENTION OF RECORDS | 16 |
| X. | NOTICES AND SUBMISSIONS. | 17 |
| XI. | RETENTION OF JURISDICTION. | 19 |
| XII. | APPENDICES | 19 |
| XIII. | LODGING AND OPPORTUNITY FOR PUBLIC COMMENT | 19 |
| XIV. | SIGNATORIES; SERVICE | 19 |

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

28
29
30
31
32
33
34
35
36

25
26

Control, acting on behalf of the State of California (the "State"), has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622 (j)(1), EPA notified the U.S. Department of the Interior, Fish and Wildlife Service ("DOI") October 1995 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of any Consent Decree.

F. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints, or any facts alleged in the complaints except as expressly admitted in this litigation or this Consent Decree.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R., Part 300, Appendix B, by publication in the Federal Register in September 1983, 48 Fed.Reg. 40658.

H. In response to a release or a substantial threat of a release of a hazardous substances at or from the Site, in April 1986 EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. EPA completed a Remedial Investigation Report ("RI") on

1 March 21, 1988, and completed a Feasibility Study Report ("FS") on
2 June 3, 1988.

3 J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
4 published notice of the completion of the FS and of the proposed
5 plan for remedial action in May 1988 in a major local newspaper of
6 general circulation. EPA provided an opportunity for written and
7 oral comments from the public on the proposed plan of remedial
8 action. A copy of the transcript of the public meeting is
9 available to the public as part of the administrative record upon
10 which the Regional Administrator based the selection of the
11 response action.

12 K. The decision by EPA on the remedial action to be
13 implemented at the Site is embodied in a Record of Decision
14 executed September 28, 1988, on which the State had a reasonable
15 opportunity to review and comment. The ROD includes EPA's
16 explanation for any significant differences between the final plan
17 and the proposed plan as well as a responsiveness summary to the
18 public comments. Notice of the final plan was published in
19 accordance with Section 117(b) of CERCLA.

20 L. The remedial action is being and will be implemented by
21 EPA. The purpose of this Consent Decree is to provide for Settling
22 Defendants' payment of their share of the cost of the remedial
23 action and the United States' and the State's other response costs.

24 M. The parties recognize, and the Court by entering this
25 Consent Decree finds, that this Consent Decree has been negotiated
26

by the parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this Decree, it is ORDERED, ADJUDGED AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State, and upon the Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree. Nothing contained in this Consent Decree shall waive or be

deemed to waive any right Mary Ann Schuessler may have to file a bankruptcy petition pursuant to the U.S. Bankruptcy Code, provided, however, that acknowledgement of such right in this Consent Decree by the United States shall not be deemed to waive, compromise, or otherwise affect the terms of this Consent Decree, including, but not limited to, the right to payment set forth in Section V (Reimbursement of Response Costs).

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

b. "Consent Decree" shall mean this Decree and any attached appendices.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or Federal Holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the

1 United States.

2 e. "Future Response Costs" shall mean all costs,
3 including, but not limited to, direct and indirect costs, that EPA
4 and the U.S. Department of Justice on behalf of EPA will incur for
5 response actions at the Site after the date of entry of this
6 Consent Decree.

7 f. "Interest", in accordance with 42 U.S.C. § 9607(a),
8 shall mean interest at the rate specified for interest on
9 investments of the Hazardous Substance Superfund established
10 pursuant to the Internal Revenue Code, 26 U.S.C. § 9507. In
11 calculating the Interest EPA may compound on a daily, monthly or
12 annual basis.

13 g. "National Contingency Plan" shall mean the National
14 Oil and Hazardous Substances Pollution Contingency Plan promulgated
15 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40
16 C.F.R. Part 300, including, but not limited to, any amendments
17 thereto.

18 h. "Paragraph" shall mean a portion of this Consent
19 Decree identified by an arabic numeral or an upper case letter.

20 i. "Parties" shall mean the United States, the State of
21 California, and Settling Defendants.

22 j. "Past Response Costs" shall mean all costs,
23 including, but not limited to, direct and indirect costs, that EPA
24 and the U.S. Department of Justice on behalf of EPA have incurred
25 for response actions at the Site prior to the date of entry of this
26

1 Consent Decree, and accrued Interest on such costs.

2 k. "Record of Decision" or "ROD" shall mean the EPA
3 Record of Decision relating to the Site signed on September 24,
4 1988 by the Regional Administrator, EPA Region 9, and all
5 attachments thereto.

6 l. "Remedial Action" shall mean the response actions at
7 the Site set forth in the Record of Decision.

8 m. "Section " shall mean a portion of this Consent
9 Decree identified by a roman numeral.

10 n. "Settling Defendants" shall mean Mary Ann Petery
11 Schuessler and Selma Pressure Treating Company, Inc., individually
12 and collectively.

13 o. "Site" shall mean the Selma Pressure Treating
14 Company Superfund Site, located in the City of Selma, County of
15 Fresno, State of California and designated by the property
16 descriptions attached hereto as Appendices A ("APN 59"), B ("APN
17 57"), and C (the "Vineyard Parcel"); and shall include all areas
18 (including land and groundwater) to which hazardous substances
19 released from the properties described in Appendices A, B, and C
20 have migrated or come to be located.

21 p. "State" shall mean the State of California, as
22 represented by the California Department of Toxics and Substances
23 Control ("DTSC") and the California Regional Water Quality Control
24 Board.

25 q. "State Response Costs" shall mean all costs,
26

including, but not limited to, direct and indirect costs, together with accrued interest that the State of California has incurred or will incur in response to the release or threatened release of hazardous substances at or in connection with the Site, but not including any amounts reimbursed to the State by EPA.

r. "United States" shall mean the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of Justice acting on behalf of the EPA.

V. REIMBURSEMENT OF RESPONSE COSTS

4.a. Payment of Response Costs to the United States.

By October 30, 1995, or no later than twenty-nine (29) days after entry of this Consent Decree, whichever occurs first, Settling Defendants will have deposited or caused their insurance carriers to have deposited for payment to the United States, \$675,000 for Past Response Costs and Future Response Costs into an escrow account established with the Registry of the Court. Settling Defendants shall instruct the clerk of the Court Registry Account to pay such amount to the United States within thirty (30) days of entry of this Consent Decree. Payment shall be made in the form of a certified check or checks or cashier's check or checks made payable to "EPA Hazardous Substance Superfund", which bear a reference to the Selma Pressure Treating Company Superfund Site, Site No. 9T44, in reimbursement of Past Response Costs and Future Response Costs. The escrow instructions have been approved by the United States and are attached to this Consent Decree as Appendix

1 D. The escrow instructions require that the Clerk of the Registry
2 Account forward such a check(s) to:

3 Region IX
4 Attention: Superfund Accounting
5 P.O. Box 360863M
6 Pittsburgh, Pennsylvania 15251

7 and send copies of the check(s) to the United States as specified
8 in Section X (Notices and Submissions).

9 b. Payment of Response Costs to the State.

10 By October 30, 1995, or no later than twenty-nine (29) days
11 after entry of this Consent Decree, whichever occurs first,
12 Settling Defendants will have deposited or caused their insurance
13 carriers to have deposited for payment to the State, \$75,000 for
14 Past and Future Response Costs into an escrow account established
15 with the Registry of the Court. Settling Defendants have
16 instructed the clerk of the Registry Account to pay such amount to
17 the State within thirty (30) days of entry of the Consent Decree.
18 The check(s) shall be made payable to Department of Toxic
19 Substances Control and shall reference the Selma Pressure Treating
20 Company Superfund Site. The escrow instructions have been approved
21 by the State and are attached to this Consent Decree as Appendix A.
22 The instructions require the clerk of the Registry Account to
23 forward a check(s) to:

24 Department of Toxic Substances Control
25 400 P Street, 4th Floor
26 Sacramento, CA 95814

VI. COVENANT NOT TO SUE BY PLAINTIFFS

5.a. In consideration of the actions that will be performed

and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 7 (General Reservation of Rights), the United States and the State each covenant not to sue or to take administrative action against Settling Defendants pursuant to Sections 106, 107(a), and 107(c) of CERCLA relating to the Site. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Section V. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

6. Financial Certification.

Settling Defendants hereby certify that all financial information submitted as of the lodging of this Consent Decree is true and correct and contains no material errors or omissions affecting the United States' assessment of the Settling Defendants' ability to pay. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order seeking to compel Settling Defendants to perform further response actions relating to the Site or to reimburse the United States for additional costs of response if the United States obtains information indicating that the financial information submitted as

of the date of the lodging of this Consent Decree is not true and correct or otherwise contains material errors or omissions affecting the United States' assessment of the Settling Defendants' ability to pay.

7. General Reservations of Rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 5. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including, but not limited to, the following:

- (a) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- (b) liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site;
- (c) liability for damages for injury to, destruction of, or loss of natural resources;
- (d) liability for response costs that have been or may be incurred by any federal agencies other than EPA or the Department of Justice on behalf of EPA;
- (e) criminal liability; and
- (f) liability, if any, for violations of federal or state law which occur during or after implementation of the Remedial Action.

VII. COVENANTS BY SETTLING DEFENDANTS

8. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law, any claim against the United States or the State, including any department, agency, or instrumentality of the United States or the State, including any department, agency or instrumentality of the United States pursuant to CERCLA Section 107 and 113 related to the Past Response Costs or Oversight Costs, or any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

VIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

9. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against

any person not a party hereto.

10. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

11. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the State within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within ten (10) days of service or receipt of any Motion of Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

12. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-

1 splitting, or other defenses based upon any contention that the
2 claims raised by the United States or the State in the subsequent
3 proceeding were or should have been brought in the instant case;
4 provided, however, that nothing in this Paragraph affects the
5 enforceability of the covenants not to sue set forth in Section VI
6 (Covenants Not to Sue by Plaintiffs).

7 IX. RETENTION OF RECORDS

8 13. Until ten (10) years after the entry of this Consent
9 Decree, each Settling Defendant shall preserve and retain all
10 records and documents now in its possession or control or which
11 come into its possession or control that relate in any manner to
12 response actions taken at the Site or the liability of any person
13 for response actions conducted and to be conducted at the Site.

14 14. At the conclusion of this document retention period,
15 Settling Defendants shall notify the United States or the State,
16 Settling Defendants shall deliver any such records or documents to
17 the EPA or the State. Settling Defendants may assert that certain
18 documents, records, and other information are privileged under the
19 attorney-client privilege or any other privilege recognized by
20 federal or state law. If Settling Defendants assert such
21 privilege, they shall provide the plaintiffs with the following:
22 (1) the title of the document, record, or information; (2) the date
23 of the document, record, or information; (3) the name and title of
24 the author of the document, record, or information; (4) the name
25 and title of each addressee and recipient; (5) a description of the
26

subject to the document, record, or information; and (6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privilege information only.

15. Each Settling Defendant hereby certifies, individually, that such Settling Defendant has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of Resource Conservation and Recovery Act.

X. NOTICES AND SUBMISSIONS

16. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent

1 | Decree with respect to the United States, EPA, the State and the
2 | Settling Defendants, respectively.

3 | As to the United States:

4 | John C. Cruden
5 | Chief, Environmental Enforcement Section
6 | Environment and Natural Resources Division
7 | U.S. Department of Justice
8 | P.O. Box 7611
9 | Washington, D.C. 20044
10 | Re: DOJ No. 90-11-2-383

11 | Jon Mueller
12 | Environment and Natural Resources Division
13 | U.S. Department of Justice
14 | P.O. Box 7611
15 | Washington, D.C. 20044

16 | As to EPA:

17 | Danita Yocom
18 | Assistant Regional Counsel
19 | U.S. Environmental Protection Agency, Region IX
20 | 75 Hawthorne Street, RC-3-2
21 | San Francisco, California 94105

22 | Michelle Lau
23 | Regional Project Manager
24 | U.S. Environmental Protection Agency, Region IX
25 | 75 Hawthorne Street, H-6-2
26 | San Francisco, California 94105

27 | As to the State:

28 | Ken Alex
29 | Supervising Deputy Attorney General
30 | Office of the Attorney General
31 | 2101 Webster Street
32 | Oakland, CA 94612-3049

33 | As to Settling Defendants:

34 | Mary Ann Petery Schuessler
35 | Post Office Box 3243
36 | Newport Beach, CA 92659

1 **XI. RETENTION OF JURISDICTION**

2 17. This Court shall retain jurisdiction of this matter for
3 the purpose of enforcing the terms of this Consent Decree.

4 **XII. APPENDICES**

5 18. The following appendices are attached to and incorporated
6 into this Consent Decree:

7 Appendices A, Real Property Descriptions
8 B, and C
9 Appendix D Escrow Instructions

9 **XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

10 19. This Consent Decree shall be lodged with the Court for a
11 period of thirty (30) days for public notice and comment. The
12 United States reserves the right to withdraw or withhold its
13 consent if the comments regarding the Consent Decree disclose facts
14 or considerations which indicate that this Consent Decree is
15 inappropriate, improper, or inadequate. Settling Defendants
16 consent to the entry of this Consent Decree without further notice.

17 20. If for any reason this Court should decline to approve
18 this Consent Decree in the form presented, this agreement is
19 voidable at the sole discretion of any party and the terms of he
20 agreement may not be used as evidence in any litigation between the
21 Parties.

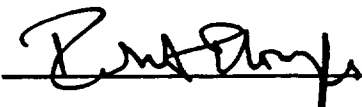
22 **XIV. SIGNATORIES; SERVICE**

23 21. Each undersigned representative of a Settling Defendant
24 to this Consent Decree and the Assistant Attorney General for the
25 Environment and Natural Resources Division of the United States
26

1 Department of Justice the Assistant Attorney General for the State
2 of California certifies that he or she is fully authorized to enter
3 into the terms and conditions of this Consent Decree and to execute
4 and legally bind such party to this document.

5 22. Each Settling Defendant shall identify, on the attached
6 signature page, the name and address of an agent who is authorized
7 to accept service of process by mail on behalf of that party with
8 respect to all matters arising under or relating to this Consent
9 Decree.

10 SO ORDERED THIS 27 DAY OF March, 1995.

11
12 
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of U.S. v. Selma Pressure Treating Company, et al., CV-F-91-
3 519 REC, consolidated with State of California v. Selma Pressure
4 Treating Company, et al., CV-F-91-522 REC, relating to the Selma
5 Pressure Treating Company Superfund Site.


6 CHARLES J. STEVENS
7 United States Attorney
8 Eastern District of California

9 DATE: 12-28-95

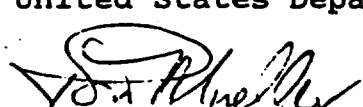
10 BY: 

11 DANIEL BENSING
12 Assistant United States Attorney
13 3654 Federal Building
14 1130 O Street
15 Fresno, California 93721
16 (209) 487-5820

17 DATE: 11/23/95

18 
19 LOIS J. SCHIFFER
20 Assistant Attorney General
21 Environment and Natural Resources
22 Division
23 United States Department of Justice

24 DATE: 9/22/95


25 
26 JON A. MUELLER
Trial Attorney
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

1
2
3 DATE: 12-6-95
4



FELICIA MARCUS
Regional Administrator
U.S. Environmental Protection Agency,
Region IX
75 Hawthorne Street
San Francisco, California 94105

5
6
7
8 DATE: 12/6/95
9



DANITA D. YOCOM
Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region IX
75 Hawthorne Street, RC-3-2
San Francisco, California 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter
2 of U.S. v. Selma Pressure Treating Company, et al., CV-F-91-519
3 REC, consolidated with State of California v. Selma Pressure
4 Treating Company, et al., CV-F-91-522 REC, relating to the Selma
5 Pressure Treating Company Superfund Site.

6 FOR THE STATE OF CALIFORNIA

7 Date: 9/2-1995

8 Ken Alex
9 KENNETH ALEX
10 Supervising Deputy Attorney General
11 Office of the Attorney General
12 2101 Webster Street
13 Oakland, CA 94612-3049

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter
2 of U.S. v. Selma Pressure Treating Company, et al., CV-F-91-519
3 REC, consolidated with State of California v. Selma Pressure
4 Treating Company, et al., CV-F-91-522 REC, relating to the Selma
5 Pressure Treating Company Superfund Site.

6 Date: May 17, 1995

7 Mary Ann Schuessler
8 Mary Ann Schuessler

9 Mary Ann Schuessler President
10 Selma Pressure Treating Company

11 Agent Authorized to Accept Service on Behalf of Above-signed
12 party:

13 Name:

14 Title:

15 Address:

United States District Court
for the
Eastern District of California
April 2, 1996

pp

* * CERTIFICATE OF SERVICE * *

1:91-cv-00519

California

v.

Selma Pressure

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on April 2, 1996, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Lisa Trankley Sato
Attorney General's Office of the State of California
P O Box 944255
1300 I Street
Suite 1101
Sacramento, CA 94244-2550

REC/hn

Bruce A Behrens
California Department of Transportation
P O Box 1438
1120 N Street
Legal Division
Sacramento, CA 95812-1438

Jon A Mueller
United States Department of Justice
Environment and Natural Resources Div
P O Box 7611
Ben Franklin Station
Washington, DC 20044

Kevin Dennis Sheehy
Law Offices of Kevin Sheehy
2001 Wilshire Blvd
Sixth Floor
Santa Monica, CA 90403

•David Douglas Doyle
Law Office of David D Doyle
1795 North Fine Avenue
Fresno, CA 93727

Daniel Edward Lungren
Attorney General's Office for the State of California
P O Box 944255
1300 I Street
Suite 1101
Sacramento, CA 94244-2550

Jack L. Wagner, Clerk

BY: P. P. [Signature]
Deputy Clerk